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U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: [REDACTED] - Los Angeles

Date:

NOV 16 1998

In re: [REDACTED]

IN DEPORTATION PROCEEDINGS

APPEAL¹

ON BEHALF OF RESPONDENT: Pro se

CHARGE:

Order: Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] -
Entered without inspection

APPLICATION: Asylum; withholding of deportation; voluntary departure

ORDER:

PER CURIAM. In a decision dated September 19, 1996, the Immigration Judge denied the respondent's application for asylum and withholding of deportation, but granted the respondent voluntary departure until November 18, 1996. On October 25, 1996, the respondent filed a late appeal.

On June 22, 1998, while the respondent's appeal was pending, we remanded the respondent's case to the Immigration Judge in light of section 202 of the Nicaraguan and Central American Relief Act of 1997, Pub. L. No. 105-100, 111 Stat. 2193 (November 19, 1997), amended by Pub. L. No. 105-139, 111 Stat. 2644 (December 2, 1997) ("NACARA"), to provide the respondent an opportunity to apply for adjustment of status. The June 22, 1998, order which

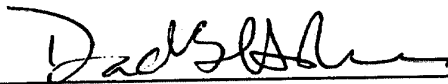
¹ Although the Immigration Judge "certified" the case to the Board as instructed in 63 Fed. Reg. 27,823, 27,830 (1998) (to be codified at 8 C.F.R. § 245.13(d)(2) (interim, effective June 22, 1998)), the case is more properly deemed "returned" to the Board as indicated in the June 22, 1998, Notice of Hearing. The Board is merely adjudicating the previously pending appeal for which the parties have already had an opportunity to request oral argument and submit briefs. Compare 8 C.F.R. §§ 3.1(c), 3.7 (requiring notification to the parties of certification, permitting the parties to request oral argument before the Board, and allowing the parties to submit briefs and make representations to the Board).

[REDACTED]

remanded the case to the Immigration Judge included an accompanying Notice of Hearing which advised the respondent that "[i]f you fail to appear at your scheduled hearing, your case will be returned to the Board of Immigration Appeals. The Board of Immigration Appeals will issue a decision on your appeal and/or motion to reopen. You may not file an application for adjustment of status under section 202 of the NACARA with the INS while your appeal is pending."

The record reflects that the respondent was notified by certified mail that he was scheduled to appear for a master hearing before an Immigration Judge on August 10, 1998. The respondent failed to appear for the hearing. On August 10, 1998, the Immigration Judge entered a decision noting that the respondent had failed to appear and "certified" the case to the Board to consider the respondent's previously pending appeal. See 63 Fed. Reg. 27,823, 27,830 (1998) (to be codified at 8 C.F.R. § 245.13(d)(2) (interim, effective June 22, 1998)). Therefore, we will adjudicate the respondent's appeal.

The record reflects that the respondent's appeal is untimely. A Notice of Appeal (Form EOIR-26) must be filed within 30 calendar days of an Immigration Judge's oral decision or the mailing of a written decision. 8 C.F.R. § 3.38(b). In the instant case, the Immigration Judge's decision was rendered on September 19, 1996. The appeal was accordingly due on or before October 21, 1996. The record reflects, however, that the Notice of Appeal was filed with the Board of Immigration Appeals on October 25, 1996. As the appeal is untimely, the Immigration Judge's decision is accordingly now final.² The record is returned to the Immigration Court without further action. See 8 C.F.R. §§ 3.3(a) and 3.38(d).



FOR THE BOARD

² An alien who is subject to a final order of exclusion, deportation or removal, and who has not been denied adjustment of status under section 202 of Public Law 105-100 by the Immigration Judge or the Board of Immigration Appeals, may apply to the Service for adjustment of status under section 202 of Pub. L. 105-100. 63 Fed. Reg. 27,823, 27,830 (1998) (to be codified at 8 C.F.R. § 245.13(d)(4) (interim, effective June 22, 1998)).